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13 ALAMEDA COUNTY MEDICAL CENTER,
 SCOTT ZELLER, M.D., KURT BIEHL, M.D.,
 JEANETTE COTANCHE, R.N., LEONI ALFONSO, R.N.,
 14 MADELYNE MARKLE, R.N.

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 LISA JOHNSON, by and through her)	Case No.: C07-03395 CW
Conservator, Sharon Toth,)	
18 Plaintiff,)	JOINT CASE MANAGEMENT
)	STATEMENT
19 vs.)	Date: January 8, 2008
20 ALAMEDA COUNTY MEDICAL CENTER,)	Time: 2:00 p.m.
SCOTT ZELLER, M.D., KURT BIEHL,)	
21 M.D., JEANETTE COTANCHE, R.N.,)	Courtroom: 2, 4 th Floor
LEONI ALFONSO, R.N., MADELYNE)	1301 Clay St. Oakland, CA
22 MARKLE, R.N., CEDRICK FROWNER, et)	
al.,)	Judge: Claudia Wilken
23 Defendants.)	

25 1. **Jurisdiction and Service:** Plaintiff's complaint for damages, filed in the Alameda
 26 Superior Court, asserts claims arising from 42 U.S.C. §1983, as well as various state law claims.
 27 Defendants ALAMEDA COUNTY MEDICAL CENTER ("ACMC"), SCOTT ZELLER, M.D.,
 28

1 KURT BIEHL, M.D., JEANETTE COTANCHE, R.N., LEONI ALFONSO, R.N., MADELYNE
 2 MARKLE, R.N. (collectively "MEDICAL DEFENDANTS") removed the action to this court
 3 pursuant to 28 USC § 1441(b). The court has jurisdiction over the plaintiff's federal claims
 4 pursuant to 28 USC §§ 1331 and 1331(3)(4), and it has jurisdiction over his state law claims
 5 pursuant to 28 USC § 1367(a). All parties have been served, but Defendant CEDRICK
 6 FROWNER ("FROWNER") has not appeared.

7 **2. Facts:** According to Defendants: The plaintiff seeks damages for injuries sustained
 8 in an incident which occurred on June 17, 2005 while she was a patient at the Psychiatric
 9 Emergency Services Department ("PES") at John George Psychiatric Pavilion ("JGPP") in San
 10 Leandro. Plaintiff was in PES because she had been detained by the Hayward Police Department
 11 pursuant to California Welfare & Institutions Code §5150, because she was deemed to be a danger
 12 to herself and/or gravely disabled due to a mental disorder.

13 While in PES, Plaintiff was placed in an individual room to sleep for several hours.
 14 Sometime between 5 and 6 a.m., a male patient, alleged to be Defendant FROWNER, was
 15 observed attempting to open the door to a restroom immediately adjacent to the room in which
 16 Plaintiff was sleeping. The restroom door was locked, and the male patient then tried to open the
 17 adjacent door to Plaintiff's room, which opened. A contract security guard observed the patient
 18 enter the room, and he alerted staff who immediately responded to the room and restrained the
 19 male patient. The security guard and staff did not observe the male patient in contact with
 20 plaintiff, but his pants were partially down and his penis exposed. Plaintiff alleges that he placed
 21 his penis in her mouth while she was sleeping, and that she awoke to find his penis in her mouth.

22 The Alameda County Sheriff's Department was called to PES and the male patient was
 23 arrested. Investigation of the door to plaintiff's room revealed that the lock on the door was
 24 functional, but that it was possible for the latching mechanism to fail to fully engage, allowing the
 25 door to open with the door lock in the locked position.

26 According to Plaintiff: Lisa Johnson, age 51, has been a licensed dentist and is currently
 27 working as an elementary school teacher and a licensed real estate sales person. Lisa does have a

1 history of mental health issues. On this occasion, she was apparently "5150'd" due to issues with
 2 medication management.

3 When Lisa Johnson was brought to the defendant's facility, she was first held with other
 4 detainees in a general area. Twice during the day, she complained to the staff that defendant
 5 FROWNER was leering at her in a threatening manner. Despite her complaints, nothing was done
 6 to stop the continuing leering and threatening behavior by FROWNER.

7 Later, Lisa Johnson was heavily sedated and placed in what was supposed to be a locked
 8 and secured room for the night. Lisa could only hope that FROWNER, who has a history of
 9 criminal violence, would be secured and unable to harm her.

10 Lisa Johnson awoke from a heavy sleep only to find FROWNER sexually assaulting her in
 11 her room. Criminal charges were brought and FROWNER was convicted of sexual assault. Lisa
 12 was given a medical examination as a rape victim and then transferred to related County operated
 13 facilities for a matter of months.

14 Lisa's previous mental healthcare providers document that Lisa has suffered a severe post-
 15 traumatic stress disorder from this rape and assault.

16 It is well documented that this facility has an extraordinary history of failure to protect the
 17 staff and patients. For example, a doctor was killed there in recent years and there have been many
 18 assaults and batteries.

19 The door latch to Lisa Johnson's room did not function properly. Investigation by the
 20 California Department of Health Services ("DHS") determined that even after the fact, the facility
 21 still had not repaired the door mechanism which would fail to engage and lock.

22 **3. Legal and Factual Issues:** According to Defendant: As to ACMC, the primary
 23 factual issue on the State law claims is whether it was negligent in its care of the Plaintiff, and the
 24 primary legal issue on those claims is whether ACMC is immune from liability for plaintiff's
 25 injuries. The primary factual issues on the Federal claim is whether plaintiff's injury resulted from
 26 the application of an ACMC policy which amounted to a deprivation of any of her rights under the
 27 U.S. Constitution. The primary legal issue on the Federal claim is whether ACMC's conduct

1 amounted to deliberate indifference to plaintiff's constitutional rights.

2 As to the MEDICAL DEFENDANTS, the primary factual issue is whether they engaged in
 3 any conduct which was a cause of injury to the Plaintiff, and the primary legal issue is whether
 4 they are entitled to qualified immunity from liability to plaintiff.

5 According to Plaintiff: Defendant claims immunity but has cited no case nor code
 6 justifying immunity from their own negligence in this case. Defendants deny depriving Lisa
 7 Johnson of her civil rights and deny deliberate indifference. Lisa Johnson claims her multiple
 8 complaints to the staff being ignored and the lack of protection in both securing her room and in
 9 failing to secure FROWNER from her are three separate instances of deliberate indifference on the
 10 part of defendants, particularly given defendant's history.

11 **4. Motions:** There are no motions pending. ACMC and the MEDICAL
 12 DEFENDANTS anticipate filing a motion for summary judgment/summary adjudication.

13 **5. Amendment of Pleadings:** None known to defendants or plaintiff at this time.

14 **6. Evidence Preservation:** ACMC's medical records are maintained in accord with
 15 state and federal regulations, and no evidence preservation program is anticipated to be necessary.

16 **7. Disclosures:** Prior to the case management conference, the parties will comply
 17 with the requirements of Rule 26 by disclosing all non-privileged, relevant documents and the
 18 identity of all known witnesses with relevant information.

19 **8. Discovery:** Prior to removal to this court, counsel for the defendants commenced,
 20 but did not complete, the deposition of the plaintiff, and two of her treating physicians were
 21 deposed. The defendants anticipate taking the depositions of 3-4 more treating physicians and
 22 several members of plaintiff's family, including her mother and two of her sisters.

23 Plaintiff intends to discover to the extent of all previous incidents of violence at
 24 defendant's facility and defendant's knowledge of FROWNER's history of violence and
 25 defendant's failure to secure FROWNER and defendant's failure to protect Lisa Johnson and
 26 secure her door.

27 **9. Class Actions:** Not applicable

1 **10. Related Cases:** Not applicable.

2 **11. Relief:** For Defendant: The complaint seeks monetary damages against all
 3 defendants. ACMC and the MEDICAL DEFENDANTS contend that, in the event that they are
 4 found to be liable to plaintiff on any of her State law claims, any economic damages for medical
 5 care shall be limited to the amounts actually paid for the services, and that any non-economic
 6 damages shall be subject to the \$250,000 limitation imposed by California Civil Code Section
 7 3333.2.

8 Plaintiff objects to defendant's seeking to impose the MICRA provisions since this is not a
 9 medical malpractice case, but rather the County's failure to provide security for a patient for which
 10 they have "5150'd" and for violation of her state and federal civil rights.

11 **12. Settlement and ADR:** While this matter was pending in the Alameda Superior
 12 Court, and while the Plaintiff was represented by other counsel, the parties engaged in costly
 13 private mediation over several months, which resulted in an agreement to settle the lawsuit for
 14 \$125,000. However, the plaintiff later refused to accept the settlement and sign a release. Her
 15 prior counsel withdrew from the case, and her present counsel took over her representation. The
 16 present counsel for plaintiff has served defendants' counsel with a CCP §998 demand for
 17 \$300,000.

18 On October 22, 2007, counsel for plaintiff and defendants participated in an ADR phone
 19 conference with ADR Program Director Howard Hermann. As a result of that conference, the
 20 court referred this matter, on October 24, 2007, to Magistrate Judge James Larson for a settlement
 21 conference. Judge Larson has scheduled a settlement conference for February 13, 2008 at 2:00
 22 p.m. The parties wish to continue this case management conference until a date after that
 23 settlement conference, and they have filed a stipulation and joint request to continue the case
 24 management conference with the court.

25 **13. Consent to Magistrate Judge for All Purposes:** The defendants do not consent to
 26 a Magistrate Judge for all purposes.

27 **14. Other References:** The case is not suitable for reference to binding arbitration, a

special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues: Defendants believe that the discovery conducted thus far will permit substantial narrowing of issues related to plaintiff's injuries and damages. It is believed that further narrowing of various factual issues will be possible as discovery proceeds.

16. Expedited Schedule: Defendants do not believe that this is the type of case that can be handled on an expedited basis with streamlined procedures.

17. Scheduling: The parties propose the following dates:

Trial: January, 2009.

Pre-trial Conference: 2 weeks prior to trial.

Dispositive Motions: 60 days prior to trial.

Expert witness discovery cutoff: 100 prior to trial.

Expert Disclosure: 160 days prior to trial.

Non-Expert Discovery Cutoff: 180 days prior to trial.

Defendants request that discovery (expert and non-expert) as to any medical issues in this case not close until 60 days before trial.

18. Trial: Defendants request a jury trial and anticipate that the trial will take ten (10) court days to complete.

19. Disclosure of Non-party Interested Entities or Persons: Defendants have complied with Civil Local Rule 3-16. The undersigned attorneys for said defendants hereby recertify that, as of this date, other than the named parties, there is no such interest to report.

20. Other Matters:

The parties reiterate their joint request, reflected in the stipulation filed on December 26, 2007, that this case management conference be continued to March 18, 2008.

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1 DATED: January 2, 2008

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LAW OFFICE OF DOUGLAS C. FLADSETH

By: _____ /s/
DOUGLAS C. FLADSETH, ESQ.
Attorneys for Plaintiff

DATED: January 2, 2008

BOORNAZIAN, JENSEN & GARTHE

By: _____ /s/
GREGORY J. ROCKWELL, ESQ.
Attorneys for Defendants
ALAMEDA COUNTY MEDICAL
CENTER, ZELLER, BIEHL,
COTANCHE, ALFONSO and
MARKLE

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